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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,091	06/15/2001	Jay H. Connelly	42390.P11863	8788

7590 03/28/2007
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EXAMINER

SHELEHEDA, JAMES R

ART UNIT	PAPER NUMBER
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2623

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/882,091	Applicant(s) CONNELLY, JAY H.	
	Examiner James Sheleheda	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-129 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-129 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 01/17/07 have been fully considered but they are not persuasive.

In response, applicant's arguments in regards to the submitted 1.131 declaration are not persuasive, as the declaration fails to properly establish actual reduction to practice prior to the effective date of the Dudkiewicz reference or establish diligence from a date prior to the date of reduction to practice of the Dudkiewicz reference to either a constructive reduction to practice or an actual reduction to practice.

2. The declaration filed on 01/17/07 under 37 CFR 1.131 has been considered but is ineffective to overcome the Dudkiewicz (US 2002/0152474) reference.

a. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Dudkiewicz reference.

The declaration states, on pages 1-2, that Exhibit A evidences a reduction to practice of the invention.

In response, proof of actual reduction to practice requires a showing that the apparatus actually existed and worked for its intended purpose. The supplied Exhibit A consists of 2 pages, the first of which consists of a general outline of the system and the second being a block diagram. Firstly, while *photographs* may be utilized to establish

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reduction to practice, the shown block diagram is insufficient to establish any sort of reduction to practice. While page 2, lines 1-3, state that a working prototype of the invention was created, no actual evidence of the prototypes existence and it's functionality has been provided.

Secondly, it is noted that exhibit A fails to fully support all of the required claim limitations, such as, "receiving broadcast communications including content descriptors...*independent of whether the content pieces are received from the broadcast source*", as no particulars of the content and descriptors transmission are indicated.

Finally, it is noted that Exhibit C, supplied with the declaration, specifically indicates that the invention was only 15% complete as of May 09, 2001, with testing of the device expected to be performed in 2001, which appears to contradict applicant statements in regards to an actual reduction to practice of the invention by April, 2000.

- b. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Dudkiewicz reference to either a constructive reduction to practice or an actual reduction to practice.


While pages 2-3, of the supplied declaration, states that the inventor was diligent from just prior to November 16, 2000 until June 15, 2001, no actual evidence has been provided to establish diligence, as the declaration specifically states on page 3, paragraph 13, that while evidence supposedly exists, it will not be provided. Thus, the

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1.131 declaration cannot establish diligence as the statement that the subject matter "was diligently reduced to practice" is not a showing but a mere pleading.

Thus, diligence has not been established for any of the period between November 16, 2000-May 09, 2001.

Furthermore, it is unclear as to why any documentation concerning diligence cannot and will not be provided, as all of the other provided documents are also specifically disclosed as being "confidential internal company documents" as indicated in Exhibit A and paragraph 14.

Finally, reasonable diligence of the attorney in preparing and filing the patent application has not been established for the period of May 09, 2001-June 15, 2001, as no statement in regards to attorney diligence has been provided, over. Six days to execute and file application is acceptable. 

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-129 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dudkiewicz (US 2002/0152474 A1) in view of Shah-Nazaroff et al. (Shah-Nazaroff) (6,317,881) (of record).

As to claim 1, while Dudkiewicz discloses a method, comprising:

receiving broadcast communications including content descriptors via a first communications link from a broadcast source (paragraphs 53, 64 and 75), the content descriptors including descriptors of a plurality of corresponding content pieces (paragraphs 55-59) independent of whether the content pieces are received from the broadcast source (in regards to upcoming content; paragraph 53);

performing an automated rating algorithm to rate at least a portion of the plurality of content pieces to generate a rating feedback (paragraph 79), he fails to specifically disclose transmitting the rating feedback via a second communications link to a remote location.

In an analogous art, Shah-Nazaroff discloses a broadcast system (Fig. 1) wherein ratings feedback data related to content items (column 3, lines 22-55 and column 6, lines 23-59) are generated based upon received content descriptors (column 6, lines 39-47) and transmitted to a remote location (column 3, lines 56-62) for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences (column 4, lines 43-54, column 6, lines 11-22 and column 6, line 60-column 7, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz's system to include transmitting the rating feedback via a second communications link to a remote location, as taught by Shah-Nazaroff, for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences.

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As to claim 36, while Dudkiewicz discloses an apparatus (Fig. 10), comprising:

- a processor (Fig. 10; paragraph 74);
- a memory, coupled to the processor (Fig. 10; paragraph 74), to store a plurality of machine instructions including an automated rating algorithm (Fig. 10; paragraph 74);
- a storage device, coupled to the processor (Fig. 10), to store content pieces (paragraph 82); and
- a communications interface, coupled to the processor (Fig. 10), which enables the apparatus to receive broadcast communications from a broadcast source via a first communications link (paragraphs 53, 64, 74 and 75), the broadcast communications including a plurality of content descriptors that describe a plurality of corresponding content pieces (paragraphs 55-59) independent of whether the content pieces are received from the broadcast source (in regards to upcoming content; paragraph 53); and

wherein execution of the machine instructions by the processor causes the apparatus to receive the content descriptors as they are broadcast (paragraph 74), to perform the automated rating algorithm to generate the rating feedback (paragraph 74 and 79), the rating feedback corresponding to at least a portion of the plurality of content pieces (paragraph 79), he fails to specifically disclose transmitting the rating feedback to the broadcast source.

In an analogous art, Shah-Nazaroff discloses a broadcast system (Fig. 1) wherein ratings feedback data related to content items (column 3, lines 22-55 and column 6, lines 23-59) are generated based upon received content descriptors (column

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6, lines 39-47) and transmitted to a remote server (column 3, lines 56-62) for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences (column 4, lines 43-54, column 6, lines 11-22 and column 6, line 60-column 7, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz's system to include transmitting the rating feedback to the broadcast source, as taught by Shah-Nazaroff, for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences.

As to claim 61, while Dudkiewicz an article of manufacture (client device, 26), comprising:

a machine readable medium (Fig. 10; paragraph 74) that provides instructions which, when executed by a machine (paragraph 74), cause the machine to:

receive broadcast communications including content descriptors via a first communications link from a broadcast source (paragraphs 53, 64 and 75), the content descriptors including descriptors of a plurality of corresponding content pieces (paragraphs 55-59) independent of whether the content pieces are received from the broadcast source (in regards to upcoming content; paragraph 53); and

perform an automated rating algorithm to rate at least a portion of the plurality of content pieces to generate a rating feedback (paragraph 79), he fails to specifically

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disclose transmitting the rating feedback via a second communications link to a remote location.

In an analogous art, Shah-Nazaroff discloses a broadcast system (Fig. 1) wherein ratings feedback data related to content items (column 3, lines 22-55 and column 6, lines 23-59) are generated based upon received content descriptors (column 6, lines 39-47) and transmitted to a remote location (column 3, lines 56-62) for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences (column 4, lines 43-54, column 6, lines 11-22 and column 6, line 60-column 7, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz's system to include transmitting the rating feedback via a second communications link to a remote location, as taught by Shah-Nazaroff, for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences.

As to claim 83, while Dudkiewicz discloses a broadcast system (Fig. 1), comprising:

broadcasting broadcast communications including content descriptors via a first communications link from a broadcast source (paragraphs 53, 64 and 75), the content descriptors including descriptors of a plurality of corresponding content pieces (paragraphs 55-59) independent of whether the content pieces are broadcast from the

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broadcast source to the client systems (in regards to upcoming content; paragraph 53);
and

a rating feedback comprising a rating generated by the client system of at least a portion of the plurality of content pieces (paragraph 79), he fails to specifically disclose receiving a rating feedback from the plurality of client systems via a second communications link.

In an analogous art, Shah-Nazaroff discloses a broadcast system (Fig. 1) wherein ratings feedback data related to content items (column 3, lines 22-55 and column 6, lines 23-59) are generated based upon received content descriptors (column 6, lines 39-47) and transmitted to a remote location (column 3, lines 56-62) for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences (column 4, lines 43-54, column 6, lines 11-22 and column 6, line 60-column 7, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz's system to include receiving a rating feedback from the plurality of client systems via a second communications link, as taught by Shah-Nazaroff, for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences.

As to claim 94, while Dudkiewicz discloses a broadcast system (Fig. 1),
comprising:

a server (Fig. 1); and

at least one communications link to transmit broadcast communications including content descriptors to a plurality of client systems (paragraphs 53, 64 and 75), the content descriptors including descriptions of a plurality of corresponding content pieces (paragraphs 55-59) independent of whether the content pieces are transmitted to the client system (in regards to upcoming content; paragraph 53); and

a rating feedback comprising a rating generated by each of the client systems of at least a portion of the plurality of content pieces (paragraph 79), he fails to specifically disclose transmitting the rating feedback to the server.

In an analogous art, Shah-Nazaroff discloses a broadcast system (Fig. 1) wherein ratings feedback data related to content items (column 3, lines 22-55 and column 6, lines 23-59) are generated based upon received content descriptors (column 6, lines 39-47) and transmitted to a remote server (column 3, lines 56-62) for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences (column 4, lines 43-54, column 6, lines 11-22 and column 6, line 60-column 7, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz's system to include transmitting the rating feedback to the server, as taught by Shah-Nazaroff, for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences.

As to claim 103, while Dudkiewicz an article of manufacture, comprising:

a machine readable medium (Fig. 10; paragraph 74) that provides instructions which, when executed by a machine (paragraph 74), cause the machine to:

broadcast broadcast communications including content descriptors via a first communications link from a broadcast source to a plurality of client systems via a first communications link (paragraphs 53, 64 and 75), the content descriptors including descriptors of a plurality of corresponding content pieces (paragraphs 55-59) independent of whether the content pieces are received from the broadcast source (in regards to upcoming content; paragraph 53); and

a rating feedback comprising a rating generated by each of the client systems of at least a portion of the plurality of content pieces (paragraph 79), he fails to specifically disclose receiving the rating feedback via a second communications link.

In an analogous art, Shah-Nazaroff discloses a broadcast system (Fig. 1) wherein ratings feedback data related to content items (column 3, lines 22-55 and column 6, lines 23-59) are generated based upon received content descriptors (column 6, lines 39-47) and transmitted to a remote location (column 3, lines 56-62) for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences (column 4, lines 43-54, column 6, lines 11-22 and column 6, line 60-column 7, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz's system to include receiving the rating feedback via a second communications link, as taught by Shah-Nazaroff, for the typical

benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences.

As to claim 112, while Dudkiewicz discloses a system (Fig. 1), comprising:
a server (Fig. 1); and
at least one communications link (paragraph 53); and
a client system (client device, 26), the client system including a processor and a memory to store an automated rating algorithm (paragraph 74 and 79); and wherein
a plurality of content descriptors are transmitted via the at least one
communications link to the client system (paragraphs 53, 64 and 75), the plurality of
content descriptors including descriptions of a plurality of content pieces (paragraphs
55-59) independent of whether the content pieces are transmitted to the client system
(in regards to upcoming content; paragraph 53);

the processor implements the automated rating algorithm to rate at least a
portion of the plurality of content pieces to generate a rating feedback (paragraph 74
and 79), he fails to specifically disclose transmitting the rating feedback via the at least
one communications link to the server.

In an analogous art, Shah-Nazaroff discloses a broadcast system (Fig. 1)
wherein ratings feedback data related to content items (column 3, lines 22-55 and
column 6, lines 23-59) are generated based upon received content descriptors (column
6, lines 39-47) and transmitted to a remote server (column 3, lines 56-62) for the typical
benefit of allowing providers to customize programming and program guide services

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based upon viewer ratings and preferences (column 4, lines 43-54, column 6, lines 11-22 and column 6, line 60-column 7, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz's system to include transmitting the rating feedback via the at least one communications link to the server, as taught by Shah-Nazaroff, for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences.

As to claim 120, while Dudkiewicz discloses a method, comprising:

broadcasting content descriptors from a server to at least one client system via at least one communications link (paragraphs 53, 64 and 75), the content descriptors including descriptors of a plurality of corresponding content pieces (paragraphs 55-59) independent of whether the content pieces are received from the broadcast source (in regards to upcoming content; paragraph 53);

receiving the content descriptors at the at least one client system (paragraphs 53, 64, and 75);

rating at least a portion of the plurality of content pieces by the client system to generating a rating feedback (paragraph 79), he fails to specifically disclose communicating the rating feedback to the server periodically via the at least one communications link.

In an analogous art, Shah-Nazaroff discloses a broadcast system (Fig. 1) wherein ratings feedback data related to content items (column 3, lines 22-55 and

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column 6, lines 23-59) are generated based upon received content descriptors (column 6, lines 39-47) and transmitted to a remote location (column 3, lines 56-62) periodically (storing and transmitting several responses; see Shah-Nazaroff at column 6, lines 48-59) for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences (column 4, lines 43-54, column 6, lines 11-22 and column 6, line 60-column 7, lines 1-9).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz's system to include communicating the rating feedback to the server periodically via the at least one communications link, as taught by Shah-Nazaroff, for the typical benefit of allowing providers to customize programming and program guide services based upon viewer ratings and preferences.

As to claims 2, 39, 62, 86 and 106, Dudkiewicz and Shah-Nazaroff disclose wherein the first communications link and the second communications link comprise a common transmission platform (see Dudkiewicz at paragraph 53 and Shah-Nazaroff at column 4, lines 56-62).

As to claims 3, 40, 63, 87 and 107, Dudkiewicz and Shah-Nazaroff disclose wherein the first communications link and the second communications link comprise separate transmission platforms (see Dudkiewicz at paragraph 53).

As to claims 4, 37, 64, 84, 95, 104, 113 and 122, Dudkiewicz and Shah-Nazaroff disclose wherein the rating feedback comprises a list of a plurality of content pieces (see Dudkiewicz at paragraph 79 and Shah-Nazaroff at column 6, lines 48-59), and wherein transmitting the rating feedback comprises periodically transmitting a batch of the rating feedback to the remote location (storing and transmitting several responses; see Shah-Nazaroff at column 6, lines 48-59), the remote location being linked to the broadcast center (see Dudkiewicz at paragraph 79 and Shah-Nazaroff at Fig. 1; column 6, lines 48-59).

As to claims 5, 38, 65, 85, 96, 105, 114 and 123, Dudkiewicz and Shah-Nazaroff disclose wherein the rating feedback comprises a single rated content piece (see Shah-Nazaroff at column 6, lines 48-59), and wherein transmitting the rating feedback comprises transmitting the rating feedback to the remote location in real-time (transmitting the questionnaire as it is completed; see Shah-Nazaroff at column 6, lines 48-59).

As to claims 6, 41, 66 and 88, Dudkiewicz and Shah-Nazaroff disclose wherein the second communications link comprises a continuous connection to the remote location (cable, optical; see Shah-Nazaroff at column 3, line 15-21), the remote location being linked to the broadcast source (see Shah-Nazaroff at Fig. 1).

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As to claims 97, 108, 118 and 124, Dudkiewicz and Shah-Nazaroff disclose wherein the at least one communications link comprises a continuous connection (cable, optical; see Shah-Nazaroff at column 3, line 15-21), to transmit rating feedback from the plurality of client systems to the server (see Shah-Nazaroff at Fig. 1, column 3, lines 56-62).

As to claims 7, 42, 67, 89, 98, 109, 119 and 125, Dudkiewicz and Shah-Nazaroff disclose wherein the second communications link comprises a connection to the remote location that is initiated to transmit the rating feedback (Internet, telephone lines; see Shah-Nazaroff at column 3, line 15-21), the remote location being linked to the broadcast source (see Dudkiewicz at paragraph 79 and Shah-Nazaroff at Fig. 1; column 6, lines 48-59).

As to claims 9, 44, 90 and 99, Dudkiewicz and Shah-Nazaroff disclose wherein the content descriptors comprise a continuous stream of data that may be tapped at any time to rate at least a portion of the plurality of content pieces via the rating algorithm (see Dudkiewicz at paragraph 79).

As to claims 10 and 45, Dudkiewicz and Shah-Nazaroff disclose receiving broadcast communications including the plurality of content pieces (see Dudkiewicz at paragraph 82); and

performing a capture algorithm to selectively determine, which, if any, of the content pieces should be cached (see Dudkiewicz at paragraph 79 and 82-84), and wherein the rating algorithm is identical to the capture algorithm (see Dudkiewicz at paragraph 79 and 82-84).

As to claims 11 and 68, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of any existing cached data files to generate the rating feedback (see Dudkiewicz at paragraph 79).

As to claims 12, 47 and 69, Dudkiewicz and Shah-Nazaroff disclose wherein the content descriptors include data pertaining to a revenue-generating potential of at least a portion of the content pieces (discount incentive for a particular broadcast; see Shah-Nazaroff at column 3, lines 33-44), and the rating algorithm includes a consideration of the content piece's revenue generating potential when generating the rating feedback (including a discount for content; see Shah-Nazaroff at column 3, line 33-44).

As to claims 13, 48 and 70, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of a user's previous viewing habits to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79-81).

As to claims 14, 20, 49, 55, 71 and 77, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of a content piece's size (or

duration) to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claims 15, 50 and 72, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of a user's preferences to generate the rating feedback (see Dudkiewicz at paragraph 79).

As to claims 16, 51 and 73, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of an availability window corresponding to a content piece to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claims 17, 52 and 74, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of a future broadcast schedule to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claims 19, 54 and 76, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of a review of a content piece provided by an external source to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claims 91, 100 and 110, Dudkiewicz and Shah-Nazaroff disclose wherein the rating of at least a portion of the plurality of content pieces is generated via a rating algorithm of the client system (see Dudkiewicz at paragraph 79).

As to claims 93, 102 and 129, Dudkiewicz and Shah-Nazaroff disclose wherein the rating feedback is received from each of the plurality of client systems independently (wherein each user system independently performs and transmits their feedback; see Dudkiewicz at paragraph 79 and Shah-Nazaroff at column 6, lines 23-59).

As to claims 21, 56 and 78, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of a user's age to generate the rating feedback (see Shah-Nazaroff at Figs. 4 and 6).

As to claims 22, 57, 79 and 111, Dudkiewicz and Shah-Nazaroff disclose generating a display on a display device that provides a user-interface that enables a user to rate content pieces so as to indicate a level of desirability for those content pieces if they are broadcast by the broadcast system (see Shah-Nazaroff at column 3, lines 47-55; Figs. 4 and 6).

As to claims 23, 58, 80, 115 and 126, Dudkiewicz and Shah-Nazaroff disclose wherein the user rates at least a portion of the content pieces (see Shah-Nazaroff at column 6, lines 23-34).

As to claims 24, 59, 81, 116 and 127, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm automatically rates at least a portion of the content pieces (see Dudkiewicz at paragraph 79).

As to claims 25, 60 and 82, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm automatically rates at least a portion of the content pieces that were not rated by the user (see Dudkiewicz at paragraph 79).

As to claims 117 and 128, Dudkiewicz and Shah-Nazaroff disclose wherein the rating feedback includes user rating of the content pieces (user rating of viewed programs; see Shah-Nazaroff at column 6, lines 23-34) and automated rating of the content pieces (automatic rating of every upcoming program; see Dudkiewicz at paragraph 79).

As to claim 26, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of a user's previous viewing habits to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79-81).

As to claims 27 and 33, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of a content piece's size (or duration) to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claim 28, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of a user's preferences to generate the rating feedback (see Dudkiewicz at paragraph 79).

As to claim 29, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of an availability window corresponding to a content piece to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claim 30, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of a future broadcast schedule to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claim 32, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of a review of a content piece provided by an external source to generate the rating feedback (see Dudkiewicz at Fig. 7, paragraph 73 and 79).

As to claim 34, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of a user's age to generate the rating feedback (see Shah-Nazaroff at Figs. 4 and 6).

As to claim 35, Dudkiewicz and Shah-Nazaroff disclose wherein the rating algorithm includes a consideration of any existing cached data files to generate the rating feedback (see Dudkiewicz at paragraph 79).

As to claim 46, Dudkiewicz and Shah-Nazaroff disclose wherein at least one content piece is cached in the storage device (paragraph 82), and the rating algorithm considers the at least one content piece that is cached when generating the rating feedback (paragraph 79).

As to claim 92 and 101, Dudkiewicz and Shah-Nazaroff disclose wherein the rating feedback includes user rating of content pieces to indicate a level of desirability in receiving those content pieces if they are broadcast by the broadcast system (desirability of seeing the movies in the future; see Shah-Nazaroff at Fig. 6).

As to claim 121, Dudkiewicz and Shah-Nazaroff discloses processing the rating feedback to generate an aggregate representation of the feedback from the at least one client system (see Shah-Nazaroff at Figs. 5 and 7; column 4, lines 20-26 and column 5, line 54-column 6, line 22), and

selecting a portion of the plurality of content pieces to be sent to the that least one client system in response to the aggregate representation of the feedback (see Shah-Nazaroff at column 6, line 60-column 7, line 9).

As to claims 18, 31, 53 and 75, while Dudkiewicz and Shah-Nazaroff disclose wherein content descriptors include data pertaining to the content piece (see Dudkiewicz at paragraph 74, Fig. 7) and the rating algorithm takes into consideration the data pertaining to the content piece to generate the rating feedback (see Dudkiewicz at paragraph 74, Fig. 7 and Shah-Nazaroff at column 7, lines 33-42), they fail to specifically disclose the content piece's past revenue performance.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to provide past revenue performance information, which could include video sales, box office receipts or the user's own pay-per view ordering or rental history, for the typical benefit of providing the user with as much information as possible to accurately determine their current interest and preferences towards the content.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz and Shah-Nazaroff's system to include the content piece's past revenue performance for the typical benefit of providing the user with as much information as possible to accurately determine their current interest and preferences towards the content.

As to claims 8 and 43, while Dudkiewicz and Shah-Nazaroff disclose wherein the broadcast communications include content descriptors which are received at pre-determined time intervals (at the end of a broadcast or in a batch at some prior time period; see Dudkiewicz at paragraph 75 and 79 and Shah-Nazaroff at column 6, lines

23-59), they fail to specifically disclose receiving a schedule pertaining to when the content descriptors will be broadcast prior to the content descriptors and utilizing the schedule to enable receipt of the content descriptors.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to provide a schedule indicating when/how data is to be received for the typical benefit of providing a means to ensure that a receiver will correctly receive data transmissions.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Dudkiewicz and Shah-Nazaroff's system to include receiving a schedule pertaining to when the content descriptors will be broadcast prior to the content descriptors and utilizing the schedule to enable receipt of the content descriptors for the typical benefit of providing a means to ensure that a receiver will correctly receive data transmissions.

Conclusion

5. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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PRIMARY PATENT EXAMINER

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Patent Examiner
Art Unit 2623